Appl. No. 10/669,309
Response Dated June 27, 2008
Reply to Office Action of March 27, 2008

Docket No.: 1020.P16535
Examiner: To, Jennifer N.
TC/A.U. 2195

REMARKS

Summary

Claims 1, 4-10, 13, 14, and 16 and 18-21 stand in this application. Claims 2, 3, 11, 12, 15 and 17 have been canceled. Claims 1, 4, 6, 8, 10, 13, 16 and 18-21 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Examiner Interview

Applicants would like to thank Examiner To for conducting a telephone interview with Applicants' representative on May 27, 2008. During the interview, Examiner To and Applicants' representative discussed the independent claims, the applied references, and the grounds of rejection. The substance of the interview is reflected by the foregoing amendments and the following remarks.

Allowable Claims

We would like to thank the Examiner for indicating the allowability of claims 4-8 and 18-20 if amended to include all of the limitations of the base claims and any intervening claims. Applicant respectfully submits, however, that these claims represent patentable subject matter as currently listed based on the amendments and/or remarks given for the independent claims as discussed in detail below. Applicant would like to respectfully reserve the right, however, to amend the allowable claims into independent form during further prosecution if warranted.

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35 U.S.C. § 103

At page 2, paragraph 3 claims 1, 3, 9, 16, 17 and 21 stand rejected under 35

U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,203,943 to Shaffer

(hereinafter "Shaffer") in view of U.S. Patent No. 6,711,607 to Goyal (hereinafter

"Goyal"). At page 4, paragraph 12 claims 10, 13 and 14 stand rejected under 35 U.S.C. §

103(a) as being unpatentable over U.S. Patent No. 6,104,721 to Hsu (hereinafter "Hsu")

in view of Goyal. Applicant respectfully traverses these rejections, and requests

reconsideration and withdrawal of the obviousness rejection.

Applicant has canceled claims 3 and 17 and has incorporated their subject matter

into claims 1, 10, 13 and 16. Therefore, the obviousness rejection with respect to claims

3 and 17 will be addressed below with respect to amended claim 1, 10, 13 and 17.

The Office Action has failed to meet its burden of establishing a *prima facie* case

of obviousness. According to MPEP § 2143, three basic criteria must be met to establish

a *prima facie* case of obviousness. First, there must be some suggestion or motivation,

either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success. Finally, the reference (or

references when combined) must teach or suggest all the claim limitations. The teaching

or suggestion to make the claimed combination and the reasonable expectation of success

must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,*

947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C §

103(a) the cited references, when combined, must teach or suggest every element of the

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claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office

Action has not established a *prima facie* case of obviousness because the cited references,

taken alone or in combination, fail to teach or suggest every element recited in claims 1,

3, 9, 10, 13, 14, 16, 17 and 21. Therefore claims 1, 3, 9, 10, 13, 14, 16, 17 and 21 define

over Shaffer, Hsu and Goyal whether taken alone or in combination. For example, claim

1 recites the following language, in relevant part:

> retrieving a processor task value of said task type for each processor, said
> processor task value representing a number of other task types affected by
> assigning said task to a processor.

As correctly noted in the Office Action, the above-recited language is not disclosed by

Shaffer or Hsu. According to the Office Action, the missing language is disclosed by

Goyal at Col. 5 lines 30-40. Applicant respectfully disagrees.

Applicant respectfully submits that Goyal fails to disclose the missing language of

the claimed subject matter. For example, Goyal at the given cite, in relevant part, states:

> In one embodiment, the arbitrator 110 manages this function by maintaining a
> master quality of service table 112 and a current assignment table 114. The master
> quality of service table 112 lists each server 102, the task streams assigned to the
> server 102 along with each task stream's quality of service requirement, and the
> current total quality of service requirement at each server 102. The current
> assignment table 114 lists tasks that have been assigned to each server--including
> transferred tasks--and the server 102 from which a task was transferred (if any).

As indicated above, Goyal arguably discloses a master quality of service table and a

current assignment table. These tables keep track of servers, the tasks assigned to servers

and the quality of service requirements for each task. Arbitrator 110 maintains the master

quality of service table and the current assignment table through updating each table to

reflect new assignments of tasks to servers. By way of contrast, the claimed subject

matter discloses "retrieving a processor task value of said task type for each processor,

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said processor task value representing a number of other task types affected by assigning

said task to a processor."

Applicant respectfully submits that Goyal fails to teach or suggest the claimed

subject matter. For example, the claimed subject matter uses processor task values to

assign a task to one of a plurality of processors. A processor task value represents a

number of other task types affected by assigning said task to a processor. Applicant

respectfully submits that the cited portions of Goyal clearly fail to teach or suggest the

use of a processor task value that "represents a number of other task types affected by

assigning said task to a processor." The cited portions of Goyal merely disclose the use

of tables to keep track of current task assignments and total quality of service

requirements. There is absolutely no indication within the cited portions of Goyal that a

processor task value is used to assign a task to a processor from a plurality of processors.

Further, Applicant respectfully submits that Goyal fails to teach or suggest

"updating said processor task values for each task type and each processor." According

to the Office Action, this language is disclosed by Goyal at Col. 6, lines 50-56. Applicant

respectfully disagrees. Goyal, at the given cite, arguably discloses arbitrator 110, which

updates quality of service table 112 to reflect a new assignment of a task to a server and a

total quality of service commitment. Arbitrator 110 also updates current assignment table

114 to reflect the assignment of a new task to a server. By way of contrast, the claimed

subject matter updates processor task values for each task type and each processor. As

previously discussed, a processor task value represents a number of other task types

affected by assigning a task to a processor. Applicant respectfully submits that the cited

portions of Goyal clearly fail to teach or suggest a processor task value, and therefore,

also fail to teach or suggest the updating of processor task values for each task type and

processor. Therefore, Goyal fails to disclose, teach or suggest the missing language.

Consequently, Shaffer, Hsu and Goyal, whether taken alone or in combination, fail to

disclose, teach or suggest every element recited in claim 1.

For at least these reasons, Applicant submits that claim 1 is patentable over the

cited references, whether taken alone or in combination. In addition, claims 10, 13 and

16 recite features similar to those recited in claim 1. Therefore, Applicant respectfully

submits that claims 10, 13 and 16 are not obvious and are patentable over the cited

references for reasons analogous to those presented with respect to claim 1. Accordingly,

Applicant respectfully requests removal of the obviousness rejection with respect to

claims 1, 10, 13 and 16. Furthermore, if an independent claim is non-obvious under 35

U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03,

for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness

rejection with respect to all claims that depend from claims 1, 10, 13 and 16, and

therefore contain additional features that further distinguish these claims from the cited

references.

Conclusion

For at least the above reasons, Applicant submits that claims 1, 4-10, 13, 14, and

16 and 18-21 recite novel features not shown by the cited references. Further, Applicant

submits that the above-recited novel features provide new and unexpected results not

recognized by the cited references. Accordingly, Applicant submits that the claims are

not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office

Action's rejection with respect to any of the dependent claims discussed above.

Accordingly, Applicant hereby reserves the right to make additional arguments as may be

necessary to further distinguish the dependent claims from the cited references, taken

alone or in combination, based on additional features contained in the dependent claims

that were not discussed above. A detailed discussion of these differences is believed to

be unnecessary at this time in view of the basic differences in the independent claims

pointed out above.

It is believed that claims 1, 4-10, 13, 14, and 16 and 18-21 are in allowable form.

Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

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The Examiner is invited to contact the undersigned at 724-933-9338 to discuss

any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any

overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account 50-4238.

Respectfully submitted,

KACVINSKY LLC

Robert V. Racunas, Reg. No. 43,027
Under 37 CFR 1.34(a)

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